



MICHIGAN ASSOCIATION FOR PURE BRED DOGS

Founded 1964

"Promoting Responsible Dog Ownership"

Committee: House Committee on Judiciary
In Opposition to: House Bill 4534 and House Bill 4535
Date: June 6, 2013

Good Morning Chairman Cotter and Members of the House Committee on Judiciary.

I am Bob Darden, dog owner and President of Michigan Association for Pure Bred Dogs. Founded in 1964 MAPBD has a forty-nine year history promoting responsible dog ownership in Michigan. MAPBD is a federation representing dozens of Michigan dog clubs and their members. Through our volunteer effort, our members and member clubs work with legislators and administrators at the state, county, township and local levels of government to keep Michigan a dog-friendly state for all dogs and dog owners.

MAPBD opposes HB 4534 and 4535 and respectfully request that this committee not support these bills.

An animal abuser registry is unnecessary. Very few animal abuse cases come before the courts each year. Judges already have full sentencing authority to seize animals or forbid future animal ownership for those convicted of animal abuse.

These bills do not differentiate between misdemeanor neglect and serious animal torture. All those convicted would be placed on the registry regardless of the nature of their crimes, or if mental health issues existed.

These bills elevate animal abuse above crimes against spouses, children or the elderly, for which no registries exists.

By definition this registry includes all vertebrates "other than human". MAPBD maintains that the exception list for protected animal activities should be expanded to include animals used in competitive animal events, animal entertainment acts, acceptable veterinary procedures, and animal breeding and handling, activities including both companion animals and livestock.

These bill are unfunded mandates. Attempts to pass similar legislation in (as of Monday) 25 other states have failed, in part, because studies show a negative fiscal impact for the state.

HB 4535 include numerous undefined terms that apply to child welfare laws but are not logically or legally applicable to animal welfare.

As a result of the bills there would be literally, hundreds of non-law enforcement employees or volunteers at animal shelters that could have unfettered access to the supposedly confidential registry. Information in the registry could subject listed persons to harassment and other crimes against them, including identity theft.

These bills would potentially harm shelters by increasing euthanasia rates and decreasing adoption rates. Those who object to the invasion privacy of having all members of their household checked against an animal abuser registry could simply leave the shelters, going to private sources to obtain a pet.

MAPBD has a vested interest in the proper care of all animals, dogs in particular. MAPBD does not condone any form of animal abuse. Michigan Association for Pure Bred Dogs respectfully opposes these bills and urges their defeat.

Bob Darden

President

Michigan Association for Pure Bred Dogs



MICHIGAN ASSOCIATION FOR PURE BRED DOGS

POSITION PAPER

MAPBD.ORG

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HB 4534 OF 2013 AND HB 4535 OF 2013

MAPBD OPPOSES BOTH HB 4534 AND HB 4535. CONCERNED MICHIGAN DOG OWNERS ARE ENCOURAGED TO CONTACT THEIR STATE LEGISLATORS TO VOICE OPPOSITION TO THESE BILLS.

HB 4534 and HB 4535 would establish an animal abuser registry in Michigan. All public or private animal control shelters, humane societies, or animal rescue groups would be required to check all applicants and their families against this registry before placing any animal. If an applicant's name were on the registry, that person would be forbidden from adopting an animal. **HB 4534 and HB 4535** sound good in theory and no one supports animal abuse. But, in their entirety, these bills would produce drastic unintended consequences if enacted. Among them, **HB 4534 and HB 4535:**

- (1) would impose additional administrative requirements for state and local police agencies and courts that are already overburdened and facing budget cut backs;
- (2) would create a new criminal offense for failure to register;
- (3) would not distinguish between minor and major abuse/neglect offenders. Offenses ranging from the blatant to the perceptual would place citizens on the animal abuser registry. All offenders would remain on the animal abuse registry for 5 years, regardless of the nature of the offense;
- (4) would elevate animal abuse above spousal, child, or elder abuse, for which no registries exist.

- (5) presume that all abusers will automatically offend again, even though the reoffense rate is much higher for other non-registry required offenses such as drunk driving and drug abuse;
- (6) might impede abuse investigations by providing a listing of potentially innocent previously convicted persons, distracting from an impartial investigation starting point;
- (7) would establish a limited public access data base but allow untold numbers of people besides law enforcement to gain access to confidential information in the database, which would include reports, photographs, addresses, social security numbers, and fingerprints.

WHAT IS PROTECTED ANIMAL USE?

Besides civil rights concerns, responsible dog owners, and in fact, all animal owners, need to be aware of the applicable definitions in **HB 4535**. This bill uses the current definition of “animal” found in **MCL 750.40** which is “a vertebrate other than a human.” Thus, besides companion animal mammals, the scope of the definition includes fish, reptiles, amphibians, birds, exotics, livestock, and wildlife. **HB 4535** lists specific cases of animal abuse including dog fighting activities and crimes against nature with an animal in Sec. 2 (b) (*i-viii*). However, since **HB 4535** applies to all animals, **MAPBD** is concerned with the highly limited exception statement in Sec. 2 (b):

“Animal abuse offense” means 1 or more of the following, but does not include the lawful use of an animal to hunt or to participate in field trials.

MAPBD acknowledges that hunting and field trials are appropriate exceptions. However, radical animal rights groups such as Humane Society of the United States (HSUS) and Animal Legal Defense Fund (ALDF), which specifically advocates for legal “personhood” of all animals, have relentlessly lobbied throughout the United States to declare normal animal husbandry practices, and other animal use, “inhumane” and “cruel” in attempts to have these activities banned. These lawful activities include, but are not limited to:

- 1) standard livestock animal husbandry practices,
- 2) maintaining large feedlots and slaughtering animals for meat,
- 3) animals used in entertainment such as circuses and rodeos,
- 4) sanctioned animal races such as horse racing and sled dog racing,
- 5) sanctioned animal competitions in both conformation and performance events,
- 6) purebred dog and cat breeding activities, and,
- 7) medical procedures performed by licensed veterinarians including tail docking on livestock and dogs, and removal of canine dewclaws.

MAPBD takes the position that the exception list in Sec. 2 (b) must be expanded to properly include normal and acceptable animal use as listed above. Otherwise, responsible animal owners, including those in production animal farming, could be subject to harassment, unwarranted investigations, and unfounded charges of abuse by animal rights zealots who wish to impose their personal philosophies on law-abiding citizens. This position is further justified by the open-ended Sec. 2 (b)(vii), defining animal abuse:

Any other violation of a law of this state or a local ordinance of a municipality that by its nature constitutes an animal abuse offense.

And, Sec. 2 (b)(ix):

An offense substantially similar to an offense described in subparagraphs (i) to (viii) under a law of the United States, any state, or any country (emphasis added) or under tribal or military law.

Michigan citizens who live in Escanaba are not controlled by local ordinances in Ann Arbor or any other municipality. For example, if the citizens of Ann Arbor were to declare sled dog racing a prohibited activity and label it as animal abuse, that restriction does not apply to the rest of the state. Indeed, animal abuse laws should be set at the state level so that Michigan citizens are on notice of

them and not at the mercy of a patchwork of idiosyncratic municipal ordinances. Additionally, Michigan citizens are under no legal obligation to know or be aware of the laws of any other state and certainly are not under the jurisdiction of those states or any other country. Ideally, one would expect this knowledge to be a two-way street in terms of applicability so that the Michigan citizen could freely choose which laws to follow. For example, while it is illegal to dock dog tails in Great Britain, it is legal to do so in all of the United States. On the other hand, China has no codified animal cruelty laws. Thailand has some anti-cruelty laws but also allows for slaughter of dogs for human consumption. So which country's laws will Michigan residents be obligated to follow? This absurdity becomes clear when one realizes that the laws of other countries do not constitute a defense.

LEGALESE IS NOT FUNGIBLE

Numerous, significant problems with these bills stem from the actual language in **HB 4535**. It appears that most of the verbiage was directly lifted from child protection and adoption laws, with the word "animal" substituted for "child" throughout. Over the years, both animal rights groups and the animal shelter industry have purposefully selected terms from child welfare statutes in an attempt to equate "adoption" of a pet with adoption of a human child. As a consequence, the resulting legal context of **HB 4535** when applied to pets ranges from disastrous to ridiculous. For example, there are references to "animal protective services," and "animal placement agencies" taken directly from the phrases "child protective services" and "child placement agencies." The operations of private corporation humane societies or animal rescue organizations are not equivalent to the compelling state interests in "child protective services." We have no "animal placement agencies" in Michigan as this is not a function of the state. Additionally, **HB 4535** makes several references to such things as "legally mandated public or private...foster care agency," "foster care applicant or licensee," and

“foster care,” but provides no legal definitions of these terms in the bill.

Many animal shelter organizations temporarily place excess animals in the homes of volunteers and refer to these private residences as “foster homes.” While there is a strict definition of a foster home in child welfare laws, there is absolutely no fixed definition for corresponding animal “foster homes.” Again, there is no such thing in Michigan as a “legally mandated foster care agency,” as it applies to animals. Temporarily placing various pets in private homes is not a function of the state.

The Michigan Department of Agriculture and Rural Development (MDARD) requires animal shelters, dog pounds, humane societies, and non-profit organizations caring for non-livestock homeless mammals to obtain an Animal Shelter License. Currently MDARD registers about 200 such organizations. However, shelters that offer homeless reptiles, amphibians, fish, birds, or livestock animals such as pigs, cattle, and horses to the public for adoption are not required to register and file annual reports with MDARD. Thus, the exact number of these types of unregulated shelters is unknown. Nevertheless, **MDARD specifically states on its web site that “foster home rescues” are exempt and do not need an Animal Shelter License.**¹ The lack of oversight by MDARD and the lack of a legal definition of a “foster home” in **HB 4535** combine to create major concerns in regard to enforcement and accessing the confidential information in the animal abuse registry database.

WHO CAN ACCESS THE DATABASE?

HB 4534 requires all public and private animal control shelters or animal protection shelters to check the publicly accessible animal abuser registry for the name of anyone wishing to adopt an animal. If an individual's name, or the name of anyone in the household appears on the registry, then these entities cannot allow the animal to be adopted. **HB 4535** states the database will be operated

¹ Available at MDARD website, http://www.michigan.gov/mdard/0,4610,7-125-1569_16979_21260---,00.html
Last viewed, 4/17/2013.

and maintained by the State Police Department. The publicly accessible database will contain the name, date of birth, and zip code of anyone convicted of animal abuse. All other collected information on the database, which includes written reports, addresses, photographs, social security numbers, and fingerprints, is considered confidential. Naturally, all local, state, and federal law enforcement agencies would have access to this additional information. However, because **HB 4535** appears to contain language from child welfare laws, **without appropriate definitions or limitations that apply specifically to animal welfare, serious concerns are raised regarding the seemingly unlimited numbers of people who would have access to the the non-public, confidential information contained in the animal abuser registry database.** Indeed, as written, **HB 4535** would facilitate access to the supposedly confidential information to every animal shelter, rescue organization, or veterinarian in the state.

Sec. 7 (5) states:

A written report, document, or photograph filed with the department under this act is confidential and may be disclosed only to the following:

(a) A legally mandated public or private animal protective agency investigating a report of known or suspected animal abuse or neglect, or a legally mandated public or private animal protective agency or foster care agency prosecuting a disciplinary action against its own employee regarding animal protective services or foster records.

Sec. 7(5)(c) also gives access to:

A veterinarian who is treating an animal whom the veterinarian suspects may have been abused or neglected.

Additional reasons for access to confidential records are given in Sec. 7 (5)(j):

An animal placing agency for the purpose of investigating an applicant for adoption, a foster care applicant or licensee or an employee of a foster care applicant or licensee, an adult member of an applicant's or licensee's household, or any other individual in a foster care or adoptive home who is

directly responsible for the care and welfare of animals, to determine the suitability of a home for adoption or foster care... .

If veterinarians, private animal shelter employees, or their volunteers “suspect” animal abuse, the proper response is to immediately contact law enforcement, not become vigilantes trolling through a confidential criminal database. Child welfare laws have a tremendously high threshold of investigative necessity. These above sections in **HB 4535** make a mockery of that compelling state interest by presuming that the substitution of the word “animal” or application of the words “foster care” to placing animals as pets is an equivalent process. As previously stated, there are no such entities in Michigan as a “legally mandated private animal protective agency,” a “legally mandated animal placing agency,” or “a legally mandated animal foster care agency.” And despite the fact that there are legally mandated dog pounds and shelters managed by municipal or county law enforcement agencies, there is certainly no such agency in Michigan called “animal protective services,” on par with state mandated “child protective services.”

This revolving door of unlimited access to confidential criminal records in the database also extends in §7(5)(e) to:

A person, including a multidisciplinary case consultation team, authorized to diagnose, care for, treat, or supervise an animal that is the subject of a confidential record under this act, or who is responsible for that animal's health or welfare.

As written, these bills would establish an animal abuser registry for human beings. No animal is “the subject of a confidential record under this act.” The continued absurdity of taking language from child protection laws and substituting the word “animal,” is further indicated by yet another undefined term, “multidisciplinary case consultation team,” in reference to an animal. Additionally, §7(5)(i)

would give access to the confidential database to a *guardian ad litem*. Since the definition of that term is a court appointed person to represent a minor or incompetent, it is unclear in the context of **HB 4535** if this appointee is representing the accused, or if this verbiage is an attempt to elevate animals in this state from personal property to personhood status. In any event, **MAPBD takes the position that no one, other than law enforcement and those in the judicial system should have unfettered access to any confidential criminal record.**

All state mandated child welfare and child protection agencies are staffed by professionals who have a legal obligation to maintain confidentiality. By contrast, most non law enforcement based humane societies, private animal shelters, animal rescue groups, and animal foster homes depend on unbonded employees and volunteer labor. While the state knows of approximately 200 animal shelters registered with MDARD, these are shelters for companion animal mammals only. There are countless other animal shelter organizations in Michigan for all other animals. These organizations currently have no legal obligation to identify themselves to the state. **Yet, as HB 4535 is written, hundreds of people with no law enforcement training or legal obligation could have access to the confidential information in the database, based only upon a "suspicion" of abuse or neglect, or if they chose to investigate an applicant for adoption and their entire household, a potential foster home volunteer and their entire household, or a potential employee.** Because this database would contain confidential reports, names, addresses, photographs, birth dates, and social security numbers, unscrupulous employees or volunteers at an animal shelter could acquire data needed for identity theft, other property crimes, harassment, and personal vendettas against those persons whose names appear on the registry.

If animal shelters or rescues wish to do invasive background checks of their employees and

volunteers, beyond checking the home environment, references, and any publicly available information, that should be their cost of business. **The cost of establishing, maintaining, and updating an expensive database should not be passed on to the citizens of Michigan, many of whom do not own, or wish to own any pets.** At the very least, those animal welfare entities which are not law enforcement agencies or have no law enforcement authority should be absolutely barred from any access to a confidential criminal database.

WHEN MISTAKES ARE MADE

If a citizen's name is incorrectly on the animal abuser registry list, that person must apply to the State Police to have either their name or any incorrect information removed. If no action is taken within 30 days, the citizen must then apply for an administrative hearing. Once again, substitutionary wording from child welfare laws is used to the point of absurdity. **HB 4535 Sec. 7(6)** states removal of the incorrect information can be accomplished only if the department considers it to be in the best interest of "an animal."

FISCAL IMPACT

HB 4534 and HB 4535 are unfunded mandates. To date, no legislative fiscal impact studies have been done on these bills. However, such a study has been completed on **SB 285(S-1)** and **SB 286** which are bills to increase penalties for animal cruelty convictions. That analysis and its conclusions are directly applicable to **HB 4534** and **HB 4535** because all those convicted of these crimes would be placed on the animal abuser registry. This fiscal study states the following:

The bills could have an indeterminate negative fiscal impact on State and local government by increasing criminal justice costs of both incarceration and community supervision. In 2011, there were three felony dispositions for cruelty to 10 or more animals, and none resulted in prison time. However, also in 2011

there were 45 felony dispositions for the crime of killing or torturing an animal, of which seven resulted in prison sentences.²

Supporters of **HB 4534** and **HB 4535** claim that the registry will be self-supporting because all those convicted must pay an annual registry fee. **HB 4535 Sec. 6(1)** states this annual fee will be \$250.00, of which only \$150.00 would go directly to the animal abuser registry fund. **With only 47 cases and approximately 7 convictions per year, the meager amount of money generated not only indicates an expensive database would be non-sustainable, but begs the question of whether or not an animal abuser registry is even warranted.** One of the reasons the conviction rate is so low is because most cases do not involve wanton criminals but persons suffering from mental incapacities. These persons are better treated and helped through the mental health system rather than criminal convictions. **And, in all cases, an animal abuser registry is unnecessary because all judges have full sentencing authority to seize animals or forbid future ownership of animals on a case-by-case basis.**

The ALDF has publicly stated it will offer \$10,000 to set-up an animal abuse registry if one is established in Michigan, claiming this amount is more than enough. **However, ALDF has been unsuccessful in attempts to introduce animal abuser registry laws in 22 other states.** Other states contemplating these bills have conducted fiscal impact studies which indicate **animal abuser registries are significantly more expensive to create and maintain than indicated by ALDF.** In 2012, such a bill was introduced in Colorado and failed. State expenditures were estimated at \$201,975 for the first year and \$45,894 for subsequent years with a one-time cost of approximately \$160,000 to connect it with existing computer systems. Revenues were expected to be less than \$5,000. **An animal abuser registry bill was introduced in California and failed. The Senate Appropriations Committee Fiscal**

² Fiscal Analyst: Dan O'Connor. Bill analysis. *Penalties for Crimes Against Animals*. S. B. 285(S-1) & 286: Floor Summary. Date Completed: 4-17-13. Senate Fiscal Agency. Lansing, Michigan. Available at : <http://www.legislature.mi.gov/documents/2013-2014/billanalysis/Senate/pdf/2013-SFA-0285-F.pdf>

estimated a cost of \$750,000 to \$2,000,000 to establish and maintain such a registry. In all 22 states the results have been the same in terms of negative fiscal impact. Additionally, in Nevada, several counties submitted fiscal impact notes and were concerned that such a registry creates potentially burdensome and costly requirements for law enforcement. Significant man-hour and data management requirements would pull limited resources from other public/human service duties.³

Further, any Michigan animal shelter would be limited to checking the registry for names of Michigan residents only. Unless shelters are forbidden to release pets to individuals on border states, Canada, or nationwide through Internet listings, an animal abuser registry is virtually useless when none others exist nationwide.

HB 4534 AND HB 4535 WOULD HARM SHELTERS

While it is easy to appeal to emotion and point to a few sensational cases of animal cruelty, there has been no evidence presented indicating all law-abiding Michigan citizens - who wish to add a pet to their family - need to undergo invasive and unnecessary animal abuse registry criminal background checks. Only about 25% of the total Michigan dog and cat population consists of animals adopted from shelters.⁴ MDARD requires its registered shelters to submit annual reports on the animals under their care. Of the 164 shelters that reported in 2011, fully 35% of all dogs and 51% of all cats these shelters took in were euthanized.⁵ MAPBD expresses concern that besides civil rights problems and unfunded mandates engendered by the creation of an animal abuse registry, these bills, as written, would potentially harm many animal shelters, humane societies, and animal rescue groups. These bills would impose additional administrative procedures and resultant costs on these groups,

3 Sportsmen's & Animal Owners' voting Alliance. *ALDF Animal Abuser Registry Campaign*. Available at: http://saova.org/ALDF_AbuserRegistry.html

4 National Council on Pet Population Study and Policy. Available at: <http://www.petpopulation.org/faq/html>

5 Michigan Department of Agriculture and Rural Development. *Results of 2011 Michigan Shelter Survey*. Available at: http://www.michigan.gov/documents/mdard/Results_of_2011_Michigan_Shelter_Survey_383091_7.pdf

particularly smaller, all volunteer organizations. Many law-abiding citizens, desiring to adopt a pet, would resent and likely refuse the privacy invasion of an animal abuser registry criminal background check for each and every member of their family. **MAPBD** suggests adoption rates could conceivably go down and euthanasia rates go up when families simply turn around and walk out the shelter doors to get a pet elsewhere. And these potential pet owners will have a choice. **HB 4534 and HB 4535 do not apply to sales from private breeders or other non-shelter sources, including pet shops that sell animals but do not facilitate adoptions for other organizations.** Because **HB 4535** defines an animal as “a vertebrate other than a human,” any attempt by the State to demand all private animal sales be included would literally shut down legitimate state, interstate, and international animal commerce, particularly as it applies to production farm animals.

CONCLUSION

Michigan animal law and policy should not be established through emotional pleas or animal rights agendas. An animal abuser registry is unnecessary. Very few animal abuse cases come before the courts each year. Judges already have full sentencing authority to seize animals or forbid future animal ownership for those convicted of animal abuse. These bills do not differentiate between misdemeanor neglect and serious animal torture. All those convicted would be placed on the registry, regardless of the nature of their crimes, or if mental health issues existed. These bills elevate animal abuse above crimes against spouses, children or the elderly, for which no registries exists. **MAPBD** maintains that the exception list for protected animal activities should be expanded to include animals used in competitive animal events, animal entertainment acts, acceptable veterinary procedures, and animal breeding activities, including both companion animals and livestock. **HB 4534 and HB 4535** are unfunded mandates. Attempts to pass similar legislation in 22 other states have

failed, in part because of negative fiscal impact studies. **HB 4535** includes numerous undefined terms that apply to child welfare laws but are not logically or legally applicable to animal welfare. As a result, literally hundreds of non-law enforcement employees or volunteers at animal shelters could have unfettered access to the supposedly confidential registry. The additional information could subject listed persons to harassment and other crimes against them, including identity theft. These bills would potentially harm shelters by increasing euthanasia rates and decreasing adoption rates. Those who object to the privacy invasion of having all members of their household checked against an animal abuser registry could simply leave the shelters, going to private sources to obtain a pet.

Since 1964, **Michigan Association for Pure Bred Dogs** has advocated for responsible dog ownership and reasonable canine legislation. **MAPBD** represents dozens of kennel, field trial, obedience, agility, and performance clubs throughout the state, as well as individual dog owners. Purebred dog activities bring an estimated \$41 million into the state each year. **MAPBD** has a vested interest in the proper care of all animals, and dogs in particular. **MAPBD** does not support or condone any form of animal abuse. However, for all the reasons listed in this paper, **MAPBD** opposes **HB 4534** and **HB 4535** and urges defeat of these bills.

MAPBD is a Michigan non-profit organization founded in 1964. Its members and member clubs advocate for responsible dog ownership and work to protect the rights of Michigan citizens to own, breed, and enjoy their dogs.

For more information contact MAPBD President Bob Darden: bobkdarden@hotmail.com